IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.752 OF 2004

IN

SUIT NO.709 OF 2004

...

Ismail Abdul Sattar Shaikh
and another ...Plaintiffs

v/s.

Abdulla Haider Shaikh
and others ...Defendants

...

Mr.Annu Eapen i/b Raymond & Co. for the Plaintiffs.

Mr.S.M. Sakhardande i/b Ms. S.S. Wagh for Defendants.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 14TH JANUARY,2005

**P.C.:**

1. This Notice of Motion is taken out by the Plaintiffs. The learned Counsel appearing for the Defendants states that the Defendants have no objection to motion being granted in terms of prayer clause (a) excluding the last sentence. By the last sentence of prayer clause (a), the Plaintiffs seek a temporary injunction from this court restraining the Defendants from preventing the Plaintiffs from developing the property. According to the Plaintiffs, Plaintiffs get right to develop the property because of clause (9) of the agreement dated 17th March, 1999. Clause (9) of the agreement reads as under:-

> 9. After the execution of these presents the purchaser shall be entitled to develop the said plot of land subject to the sanctioned plans and Rules and Regulations of the Municipal Corporation of Gr.Mumbai.

2. It is obvious that though by this clause the Plaintiffs are permitted to develop the property even without the sale-deed, the Plaintiffs can do so only after the building plan is sanctioned. The learned Counsel for the Plaintiffs states that to this date the Plaintiffs do not have the sanctioned building plan. In my opinion, therefore, grant of interim relief in favour of the Plaintiffs, which enable them to develop the property would be premature at this stage. Hence, Notice of Motion is granted in terms of prayer clause (a) excluding the bracketed portion, with liberty to the Plaintiffs to apply for further reliefs after the building plan is sanctioned by the Planning Authority. Motion disposed of.

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